

# PROTECTED INNOCENCE CHALLENGE

EXT HBIT

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4/16/2013

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## MONTANA REPORT CARD 2012

Montana's trafficking of persons law requires proof of force, fraud or coercion, even when the victim is a minor, limiting its utility and failing to align with federal law Commercial sexual exploitation of children (CSEC) laws are available to prosecute offenders; however, victims who are not identified or are deemed complicit in the prostitution may face barriers to accessing protection or justice.

FINAL SCORE

56

FINAL GRADE

F



3.5

14.5

12.5

6

12

7.5

10

25

15

10

27.5

15



### CRIMINALIZATION OF DOMESTIC MINOR SEX TRAFFICKING

Montana's trafficking of persons law criminalizes sex trafficking, but it requires proof of force, fraud or coercion in any case. The trafficking law includes a penalty enhancement for trafficking offenses involving sexual intercourse without consent, which minors under 16 are deemed incapable of providing. The state has the following CSEC laws: prostitution and promoting prostitution when a minor is involved, aggravated promotion of prostitution, and sexual abuse of children. However, the CSEC statutes do not reference the human trafficking law to identify commercially sexually exploited minors as victims of sex trafficking. Criminal street gang laws enhance penalties when offenses are committed in furtherance of criminal gang activity, which is defined to include the CSEC crime of aggravated promotion of prostitution.



### CRIMINAL PROVISIONS ADDRESSING DEMAND

Although the state human trafficking law tracks the federal definition and following federal precedent might have been applicable to buyers who "obtain" a minor for commercial sex acts, the state law definition of "obtain" requires an ongoing relationship with the offender making application to buyers unlikely. The prostitution law, which criminalizes patronizing prostitution, could be used to combat demand. The prostitution statute distinguishes between buying sex with minors versus buying sex with adults by providing a heightened penalty for soliciting or engaging in prostitution with a minor under 12, leaving older minors unprotected. Sexual abuse of children includes solicitation of a minor under 16 through in-person or electronic communication, but does not specify solicitation for the purpose of commercial sex acts. Sexual abuse of children also includes possession of child pornography. The sex trafficking and CSEC laws do not prohibit a mistake of age defense to prosecution leaving this assertion available to buyers. Restitution is mandatory for victims who suffer a pecuniary or economic loss, but no specific civil actions against sex trafficking or CSEC offenders are authorized. Buyers of sex with minors are required to register as sex offenders if convicted of prostitution with a child under 12 years of age, or sexual abuse of children, which includes Internet solicitation and possessing child pornography.



### CRIMINAL PROVISIONS FOR TRAFFICKERS

A trafficker convicted under the state human trafficking law faces up to 15 years imprisonment and/or a fine up to \$100,000. Promotion of prostitution of a child under 12 is punishable by up to 100 years imprisonment and aggravated promotion of prostitution is punishable by life or 4-100 years imprisonment and/or a fine up to \$100,000. If convicted of either CSEC law, a trafficker shall be ordered to complete a sexual offender treatment program and may be subject to satellite-based monitoring for life. Sexual abuse of children, which criminalizes the creation of child pornography and use of the Internet to recruit or sell commercial sex acts with minors under the age of 16, is punishable by up to 100 years or life imprisonment and a possible fine of \$10,000; a minimum sentence of 4 years is imposed when the child is under the age of 16 and the defendant must serve at least 25 years when the child is 12 or younger. Victim restitution is mandatory. Asset forfeiture is not specified for trafficking or CSEC offenses. Traffickers must register as sex offenders if convicted of CSEC offenses, but not for a conviction under the trafficking law. In Montana grounds for termination of parental rights includes when a parent is convicted of "a felony in which sexual intercourse occurred" or committed sexual abuse against a child, which is defined to include the CSEC crime of sexual abuse of children.

### DEMAND | SELECTED COMMERCIAL SEX CRIMES

Crime (name of law abridged)	Sentence	Fine (possible)	Asset Forfeiture (available)
Prostitution (§ 45-5-601(2)(b))	Max. 1 year (1st offense)	Max. \$1,000 (1st offense)	○
Prostitution (child under 12 (§ 45-5-601(3)(a))	Max. 100 years	Max. \$50,000	○
Possession of child pornography— sexual abuse of children (§45-5-625)	Max. life sentence	Max. \$10,000	○

All criminal penalties are statutory; many states also have sentencing guidelines that are not codified which affect sentencing.